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William C. Tritt  
RENNER, OTTO, BOISSELLE & SKLAR, LLP  
Nineteenth Floor  
1621 Euclid Avenue  
Cleveland, OH 44115

EXAMINER
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PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/915,624

Applicant(s)

RODICK, RONALD G.

Examiner

Jes F. Pascua

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-20 and 22-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-20 and 22-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. In view of the substitute appeal brief filed on 11/30/2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
Nathan J. Newhouse

Supervisory Patent Examiner.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "lower surface of the second adhesive adhered to the extended body portion and the upper surface of the

first adhesive adhered to the main body portion" (claim 1), the adhesive microspheres (claims 7 and 23), the resealable adhesive adhered to the main body portion (claims 15, 18 and 26) and the resealable adhesive adhered to the extended body portion (claims 15 and 26) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 19, 20, 22-31 and 33-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding the language "peel strength up to about one pound per inch, the specification discloses releasable adhesives having a peel strength in the range from about 0.4 to about 1 pound per inch. However, the specification fails to provide an adequate written description of releasable adhesives having a peel strength below 0.4 pound per inch.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, first paragraph.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20, 22-24, 31 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 14 and 19, the preamble should be changed from "A resealable closure" to --a resealable container-- in order to maintain consistent preamble language with the claims dependent therefrom.

In claim 3, the recitation "wherein the container is free of a reclosure strip" appears to contradict claim 1, which recites "a resealable closure".

In claims 15 and 18, the releasable adhesive being adhered to the extended body portion or the main body portion is inconsistent with claim 1, which recites the first and second adhesives as being adhered to the extended body portion or main body portion.

In claim 31, the relationship and association between the "release liner" and the "plurality of walls" has not been defined to warrant the language "wherein one of the first and the second of the plurality of walls extends beyond the other to form an integral flap, and the integral flap is foldable to bring the release liner into sealing contact with the releasable adhesive."

In claim 31, the relationship and association between the "resealable adhesive" and the "plurality of walls" has not been defined to warrant the language "wherein one of the first and the second of the plurality of walls extends beyond the other to form an integral flap, and the integral flap is foldable to bring the release liner into sealing contact with the releasable adhesive."

In claim 32, it is unclear if applicant is claiming the "closure" alone or the combination of the "closure" and "container". The preamble recites the "container" in function terms whereas the last two lines of the claim positively recite "container" structure. Clarification of the scope of claim 32 is requested. For the purposes of examination, claim 32 will be considered directed to the "closure" alone.

In claims 10 and 11, "the release surface" lacks antecedence in the claim from which they depend.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 5, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by U.S. Patent No. 6,120,184 to Laurence et al. (previously cited).

The adhesive affixing the spout structure 71 of Laurence et al. to the bag 50 meets the structure of the claimed "first adhesive layer is adhered to the main body portion" and the sealing material 27 applied to the flap 26 for adhering it to the sheet

member 73 meets the claimed structure "the second adhesive layer is adhered to the extended body portion".

As a note, each stripe of releasable adhesive 76 in Laurence et al. meets the recitation "wherein the releasable adhesive is applied in a continuous film".

Regarding claims 15 and 18, since releasable adhesive 76 is **permanently adhered** to the main body portion of the container 50 via sheets 74, 75 (see column 6, lines 18-21), the releasable adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

9. Claims 1-3, 5, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,120,184 to Laurence et al. (previously cited).

10. Claims 1-3, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by U.S. Patent No. 6,315,448 to Thrall (previously cited). See Fig. 9.

Regarding claims 15 and 18, since releasable adhesive 45 is **permanently adhered** to the main body portion of the container via sheets 42, 44 and adhesives 41, 43, the releasable adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

11. Claims 1-3, 5, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,315,448 to Thrall (previously cited).

12. Claims 1-3, 5, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by U.S. Patent No. 6,325,541 to Thrall et al. (previously cited).

Regarding claims 15 and 18, since releasable adhesive 54 is **permanently adhered** to the main body portion of the container via sheet 52 and adhesive 58, the releasable adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

13. Claims 1-3, 5, 6, 9-11, 15-18 and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,325,541 to Thrall et al. (previously cited).

14. Claims 32-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kobe et al. (previously cited). See Fig. 4.

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 4, 19, 20, 22, 24, 25-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurence et al. and Kobe et al.

Laurence et al. discloses the claimed device, as set forth above, except for the releasable adhesive having a peel strength in the range from about 0.4 to about 0.9

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pounds per inch. Kobe et al. discloses that it is known in the art to provide an analogous adhesive that is releasable from its target area in the range from about 0.01 kN/m to about 3 kN/m (or 0.06 lbf/in to 3000 lbf/in). See column 1, lines 60-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the releasable adhesive of Laurence et al. with the peel strength in the range from about 0.4 to about 0.9 pounds per inch as taught by Kobe et al., in order to provide a contact responsive fastening layer which has a surface that possesses essentially no surface tack.

Regarding claim 26, since releasable adhesive 76 is **permanently adhered** to the main body portion of the container 50 via sheets 74, 75 (see column 6, lines 18-21), the releasable adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

17. Claims 4, 19, 20, 22, 24, 25-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,315,448 to Thrall and Kobe et al.

Thrall discloses the claimed device, as set forth above, except for the releasable adhesive having a peel strength in the range from about 0.4 to about 0.9 pounds per inch. Kobe et al. discloses that it is known in the art to provide an analogous adhesive that is releasable from its target area in the range from about 0.01 kN/m to about 3 kN/m (or 0.06 lbf/in to 3000 lbf/in). See column 1, lines 60-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the releasable adhesive of Thrall with the peel strength in the range from about

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0.4 to about 0.9 pounds per inch as taught by Kobe et al., in order to provide a contact responsive fastening layer which has a surface that possesses essentially no surface tack.

Regarding claim 26, since releasable adhesive 45 is **permanently adhered** to the main body portion of the container via sheets 42, 44 and adhesives 41, 43, the releasable adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

18. Claims 4, 19, 20, 22, 24, 25-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,325,541 to Thrall et al. and Kobe et al.

Thrall et al. discloses the claimed device, as set forth above, except for the releasable adhesive having a peel strength in the range from about 0.4 to about 0.9 pounds per inch. Kobe et al. discloses that it is known in the art to provide an analogous adhesive that is releasable from its target area in the range from about 0.01 kN/m to about 3 kN/m (or 0.06 lbf/in to 3000 lbf/in). See column 1, lines 60-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the releasable adhesive of Thrall et al. with the peel strength in the range from about 0.4 to about 0.9 pounds per inch as taught by Kobe et al., in order to provide a contact responsive fastening layer which has a surface that possesses essentially no surface tack.

Regarding claim 26, since releasable adhesive 54 is **permanently adhered** to the main body portion of the container via sheet 52 and adhesive 58, the releasable

adhesive inherently meets the recitation of "a peel strength greater than one pound per inch".

19. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laurence et al., Thrall or Thrall et al.

Laurence et al., Thrall and Thrall et al. each disclose the claimed invention except for the releasable adhesive comprising adhesive microspheres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use microspheres for the releasable adhesive of Laurence et al., Thrall or Thrall et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

20. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laurence et al., Thrall or Thrall et al. and Kobe et al.

Laurence et al., Thrall and Thrall et al. each disclose the claimed invention except for the releasable adhesive comprising adhesive microspheres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use microspheres for the releasable adhesive of Laurence et al., Thrall or Thrall et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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21. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurence et al., Thrall or Thrall et al.

Laurence et al., Thrall and Thrall et al. each disclose the claimed invention except for the "polymer film" of the "release surface" being polypropylene (in particular, biaxially oriented polypropylene). It would have been obvious to one having ordinary skill in the art at the time the invention was made to biaxially oriented polypropylene for the release surfaces of Laurence et al., Thrall or Thrall et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

22. Applicant's arguments with respect to claims 1-7, 9-20 and 22-35 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP